used by the court may be drawn to that effect, yet there is still a stronger reason for such a belief. Minnich's Estate[28] decided that a valid spendthrift trust was created, but it did not decide the *quantum* of the estate taken by the *cestui que trust*, that is, whether it was a life or an absolute interest; Gunnell's Estate, which arose on facts that were substantially the same as the facts in Minnich's Estate, decided that the *cestui que trust* takes an absolute interest. The conclusion seems inevitable therefore, that Gunnell's Estate and Minnich's Estate, considered together, indicate that a restraint may be placed on the alienation of an absolute equitable interest in Pennsylvania.[29]

H. F. B.

CONSTITUTIONALITY OF STATUTE FIXING VENUE FOR CRIMES COMMITTED NEAR COUNTY BOUNDARIES.—A popular statute among legislatures in the United States for the purpose of obviating the difficulty in proving the actual location of crimes committed at or near the boundaries of counties, is an enactment which provides that for offenses committed within 500 yards of the boundary, the offender may be tried in either county, regardless of the actual situs of the wrongful act.[1] Such statutes have met with varying treatment at the hands of the courts, depending somewhat upon the wording of the state constitutions as to trial by jury and somewhat upon the attitude of the court toward the trial by jury provision.

The requirement that the jury must be from the vicinage, ("*de vicineto*"), which is the provision that this statute generally is said to infringe, is one of the earliest developments of the English criminal law. The very word for jury in the Year Books is *pais*, ("country"). Originally the meaning attached to vicinage was *visne* or neighborhood.[2] Coke defines it as the "Town, Parish or Hamlet, or Place known out of the Town, etc., within the Record, within which the Matter of Fact issuable is alleged, which is most certain, and nearest thereto, the Inhabitants whereof may have the

[28] See note 13, *supra*.

[29] A very thorough examination of the cases, bearing upon restraints on the alienation of property, will be found in: Gray, Restraints on the Alienation of Property (1895); and in Foulke's Rule Against Perpetuities, Restraints on Alienation, Restraints on Enjoyment (1909). Both writers explain the origin of spendthrift trusts, and the arguments for and against them.

[1] Among the states in which this statute has been passed are Alabama, Arkansas, Illinois, Iowa, Louisiana, Massachusetts, Minnesota, Michigan, Missouri, New York, Pennsylvania, Tennessee, Texas, West Virginia and Wisconsin. It has been held unconstitutional in Arkansas, Illinois, Louisiana, Missouri, Tennessee and West Virginia; constitutional in Alabama, Iowa, Minnesota, Pennsylvania (1920) and Wisconsin; and acted upon without consideration of its constitutionality in Massachusetts, Michigan, New York and Texas.

[2] Y. B. 7 Henry IV, 27; Y. B. 8 Henry VI, 34; Y. B. 17 Edward III, 56; Y. B. 47 Edward III, 6.

better and more certain Knowledge of the Fact."[3] The reason suggested by Coke for the vicinage requirement,—so that the jury themselves may have knowledge of the case,—is that usually given, although other writers have suggested that the purpose is to give the accused the benefit of his good standing with his neighbors, if he has gained such a position, and to allow him with more certainty to secure his witnesses.[4]

When the character of the jury gradually changed from the "country" familiar with the circumstances from personal knowledge, to a special body for the trial of facts, the necessity of drawing jurors from the immediate surroundings of the accused became less pressing, and the vicinage requirement became broadened to include the entire county as the vicinage.[5] "*De vicineto:* . . . which is interpreted to be of the county where the fact is committed," says Blackstone in his Commentaries.[6] And even that requirement was weakened in England by several statutes to take care of certain special cases.[7]

This then was the condition of the common law when the various states adopted their constitutions. The wording of the Bill of Rights in the state constitutions differed with respect to this provision. Some states simply provided that the trial by jury shall remain inviolate;[8] some incorporated among the rights of the accused, a provision that he was entitled to trial by an impartial jury "of the vicinage"[9]; a few constitutions read "of the county"[10]; a large number "of the county or district"[11]; and some omitted altogether to state from what district the jury should be drawn.[12]

[3] 1 Coke's Institutes 125, sec. 193.

[4] Swart v. Kimball, 43 Mich. 443 (1880) at p. 450; Cooley, Constitutional Limitations (6th Ed.) page 391.

[5] 2 Hale's P. C. 264; 2 Hawkins P. C., Chap. 40.

[6] 4 Blackstone's Commentaries 350.

[7] Statute 33 Henry VIII c. 23. provided that persons suspected of treason might be tried in any county. Chitty in Vol. I of his Criminal Law, page 176, collects similar English statutes. Cf. also 4 Blackstone's Commentaries 303.

[8] Delaware (1897), Art. I, Sec. 4; Iowa (1857), Art. I, See 9; Michigan (1850), Art. 6, Sec. 27; New Jersey (1844), Art. I Sec. 7; New York (1894), Art. 1, Sec. 2; Texas (1876), Art. I, Sec. 15; Washington (1889), Art. I, Sec. 21, and many other states.

[9] "Vicinage"—Kentucky (1891), Bill of Rights, Sec. 11; Pennsylvania (1873), Art. I, Sec. 9; Virginia (1870), Art. I, Sec. 10; Virginia (1902), Art. I, Sec. 8. The Constitutions of Massachusetts (Art. I, Sec. 13) and Maine, (Art. I, Sec. 6) read "vicinity."

[10] "County"—Arkansas (1874), Art. II, Sec. 10; Florida (1885), Declaration of Rights, Sec. 11; Mississippi (1880), Art. III, Sec. 26; Tennessee (1870), Art. I, Sec. 9.

[11] "County or District"—Alabama (1901), Art. I, Sec. 6; Colorado (1876), Art. II, Sec. 16; Illinois (1870), Art. II, Sec. 9; Kansas (1859), Bill of Rights, Sec. 10; Minnesota, (1857), Art. I, Sec. 6; Ohio (1851), Art. I, Sec. 10; Wisconsin (1848), Art. I, Sec. 7; West Virginia (1872), Art. III, Sec. 14. The wording of the Federal Constitution, Sixth Amendment, is "impartial jury of the State and district,.....which district shall have been previously ascertained by law". U. S. Maxon, Fed. Cas. No. 15,748, 5 Blatchford 360 (1866).

[12] California (1880); Michigan (1850); New Jersey (1844); New York (1894); Texas (1876). In Michigan, New York and Texas this boundary statute has been enforced without consideration of its constitutionality. People v. Davis, 56 N. Y. 95 (1874); Hackney v. State, 74 S. W. 554 (Tex. Cr. App. 1903); Madrid v. State, 71 Tex. Cr. Rep. 420, 161 S. W. 93 (1913); Bayliss v. People, 46 Mich. 22 (1881).

Where the constitution provides that the jury must be from the county, it seems clear that such a statute as that relating to venue of trials for offenses near the county boundaries is in violation of the Constitution. And this is the result which the cases have reached.[13] In those states where the constitutional provision is "county or district," there is a conflict of opinion as to the validity of such a venue statute. Some courts hold the statute void, on the theory that "district" can not be considered as including part of another county.[14] In one case in Tennessee[15] it was argued that "district" meant a Circuit including several counties, but the court refused to concede the soundness of the argument, saying that the "district" provision only had reference to the state of things under a former constitution, at a time when there was only one court for several counties, constituting what was then called a "district." But on the other hand, in some of those states which have the "county or district" provision, the boundary statute as to venue has been upheld.[16] "This very peculiar language," said one judge concerning this provision,[17] "is obviously designed to avoid the difficulties which had arisen at the common law, without depriving the accused of trial by a jury of the vicinage." The additional provision sometimes contained in these state constitutions,—"which county or district shall have been previously ascertained by law,"—is relied on by some courts to establish the validity of this boundary statute.[18]

In the cases just considered the decision turned on the meaning of a particular phrase in the constitution. A more fundamental question is raised where the state constitution provides for a trial by a jury of the "vicinage," or impliedly or expressly preserves the trial by jury as heretofore. This is the situation in Pennsylvania, where the state constitution contains both of these provisions.[19] In that state the Supreme Court has just been called upon to decide the constitutionality of this boundary statute for fixing venue, passed sixty years ago. The court up-

[13] Dougan v. State, 30 Ark. 41 (1875); State v. Lowe, 21 W. Va. 782 (1883); State v. Montgomery, 115 La. 155, 38 So. 949 (1905). In Louisiana the constitutional provision is "parish" instead of "county," (Art. IX, Constitution of 1898). Compare State v. Harris, 107 La. 325, 31 So. 782 (1902), in which case it was held that the defendant had waived his right to object to the venue.

[14] Armstrong v. State, 1 Coldwell 338 (Tenn. 1860); Buckrice v. People, 110 Ill. 29 (1884).

[15] Armstrong v. State, supra.

[16] Grogan v. State, 44 Ala. 9 (1870); Jackson v. State, 90 Ala. 590, 8 So. 862 (1890); State ex rel. Brown v. Stewart, 60 Wis. 587 (1884); State v. Robinson, 14 Minn. 447 (1869).

[17] In Re Eldred, 46 Wis. 530, 548 (1879).

[18] State v. Robinson, *supra.*

[19] "Trial by jury shall be as heretofore, and the right thereof remain inviolate," (Art. I, Sec. 6). "In all criminal prosecutions the accused hath a right to . . . . a speedy public trial by an impartial jury of the vicinage," (Art. I, Sec. 9).

held the statute,[20] relying on the fact that the primary meaning of *vicinage* was not county, but rather neighborhood or vicinity. The Pennsylvania court relies strongly on Massachusetts decisions[21] applying in that state a similar statute, since the Massachusetts constitution provides[22]: "In criminal prosecutions, the verification of facts in the *vicinity* where they happen, is one of the greatest securities for the life, liberty and property of the citizen." But the Pennsylvania court does not point out the fact that the Massachusetts court has never specifically passed on the constitutionality of this boundary statute, either in the first case or in subsequent cases under the statute.[23] Nor is attention called to another Massachusetts case,[24] construing this very section of their constitution, in which Chief Justice Parker comments on the difference between *vicinity* and *vicinage:*—"For the word *vicinity* is not technical, with a precise legal meaning, as the word *county* or the ancient word *visne*, vicinage, would be held to be."

The question seems not to have arisen in Kentucky and Virginia, the only other states except Pennsylvania in which the technical word *vicinage* is used, although the Virginia court has intimated[25] that it will give to that provision a liberal interpretation. The West Virginia Supreme Court in a dictum[26] presumed "that it would be held in Virginia, that the word *vicinage* in their constitution was not equivalent to county," but held the boundary statute bad in their own state because the constitution said "county." But in Missouri, where the vicinage provision had been in a former constitution and where the court construed the present constitution to have the same effect, it was held that a statute like that in Pennsylvania was void.[27] The reasoning behind the Missouri decision is that by common law at the time of the adoption of the state constitution *vicinage* meant county, and when the word was incorporated into the constitution, it was that definite right which it was intended should be preserved.

The logic of this case is strong, and on strict principles of construction the conclusion of the Missouri court seems correct.

[20] Commonwealth v. Collins, 268 Pa. 295; 110 Atl. 738 (1920). The statute in this case is Sec. 48 of the Criminal Code, (Act March 31, 1860, P. L. 427). In the case the offense was proved actually to have been committed in the county other than that in which the offender was convicted, but the conviction was affirmed on the strength of the statute, which the court held constitutional.

[21] Comm. v. Costley, 118 Mass. 25 (1875); Comm. v. Matthews, 167 Mass. 173 (1897).

[22] Constitution of Massachusetts, (1780), Art. I, Sec. 13.

[23] Comm. v. Gillon, 2 Allen (84 Mass.) 502 (1861).

[24] Comm. v. Parker, 2 Pick. 550 (Mass. 1824), at page 553.

[25] Ruffin's Case, 21 Gratt. 790 (Va. 1871).

[26] State v. Lowe, supra, note 13.

[27] Petition of McDonald, 19 Mo. App. 370 (1885). An Iowa case under similar conditions holds the statute constitutional. State v. Pugsley, 75 Iowa 742, 38 N. W. 631 (1888). But in Iowa the statute was passed before the first State constitution.

Yet the decision in the recent Pennsylvania case in going back to the original purpose of the vicinage requirement, rather than applying the hard and fast rule of Blackstone's period, seems in accord with the policy of the Pennsylvania Supreme Court to construe liberally the trial by jury provision of its Constitution.[28] The cause of public justice is advanced, and the accused suffers no actual detriment in the trial of his case.

R. D.

CREDIT EXTENSION AS AN "UNFAIR PRACTICE" UNDER INTERSTATE COMMERCE ACT.—The growing power of administrative tribunals over the services and practices of public service corporations in their relations with the public and with each other, is well illustrated by the decisions growing out of the recent litigation between the Postal Telegraph-Cable Company and the Western Union Telegraph Company. The New York Court of Appeals has affirmed an order of the Public Service Commission requiring the Western Union Company to extend in intrastate business the same credit facilities to the Postal Company as it extends to other competing or non-competing customers.[1] As affecting interstate transactions, a similar ruling has been made by the Interstate Commerce Commission.[2] The decisions, based on statutes which did not specifically cover the question in issue, result in a striking down of the common law principle that credit extension by a common carrier or other public servant is a matter of grace, and as such does not form the basis for a charge of discrimination.[3]

In view of the statutory provisions involved, a statement of the practice complained of by the Postal Company is important. For more than thirty years prior to August 1, 1919, the Western Union had extended credit to the complainant company both on company messages and messages tendered for transmission for customers of the latter. In cases where the sender was a charge customer of both companies, the tolls would be charged directly against the sender; company messages and messages from customers of the Postal Company not on the charge list of the defendant company would be charged against the complainant, and monthly settlements would follow. When the Postal Company reduced its rates, the Western Union refused to extend credit except for company messages, though it continued to extend broader credit facilities to companies other than the Postal Company.

[28] Comm. v. Balph, 111 Pa. 365, 3 Atl. 220 (1885); Dallas v. Kemble, 215 Pa. 410; 64 Atl. 559 (1906).

[1] People ex rel. Western Union Telegraph Co. v. Public Service Commission, 129 N. E. 220 (N. Y. 1920).

[2] Postal Telegraph-Cable Co. v. Western Union Telegraph Co., 59 I. C. C. 512 (1920).

[3] 2 Wyman Public Service Corporations, Sec. 435.